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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,650	03/14/2001	Jeffrey L. Peyton	A-69185/MSS	4939
7590 01/19/2006			EXAMINER	
FLEHR HOHBACH TEST ALBRITTON & HERBERT LLP Suite 3400 Four Embarcadero Center San Francisco, CA 94111			OUELLETTE, JONATHAN P	
			ART UNIT	PAPER NUMBER
			3629	
DATE MAILED: 01/19/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/808,650

**Applicant(s)**

PEYTON, JEFFREY L.

**Examiner**

Jonathan Ouellette

**Art Unit**

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,5-13,16-18 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5-13,16-18 and 20-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Request for Continued Examination***

1. The Request filed on 11/10/2005 for Continued Examination (RCE) under 37 CFR 1.114 based on parent Application No. 09/808,650 is acceptable and a RCE has been established. An action on the RCE follows.

### ***Response to Amendment***

2. Claims 2-4, 14-15, and 19 have been cancelled; therefore Claims 1, 5-13, 16-18, and 20-23 are currently pending in application 09/808,650.

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1, 5-13, 16-18 and 20-23 are rejected under 35 U.S.C. 102(b) based upon a public use or sale of the invention (Puppetools: [www.puppetools.com](http://www.puppetools.com), retrieved from Internet Archive Wayback Machine <[www.archive.org](http://www.archive.org)>, date range: 12/22/1997- 3/1/2000).**
4. As per **independent Claims 1, 7, 16 and 23**, Puppetools discloses the elements of the claimed neurological development invention, such as: providing one or more images in a computer environment, downloading selected of said one ore more images to provide said images in paper form (printing); forming said paper form to create a puppet representative of said image by affixing a hinge to the paper form [a hinge attached or

integrated to said paper form, said hinge being adapted for hand manipulation to create a hand actuated puppet representative of said one or more images] (pgs.9-16); and interacting with an on-line training laboratory (online training course) on the puppet site (pg.7, pgs.17-21), the training laboratory comprising a plurality of developmental segments having multimedia audio and video files containing content which facilitates learning and communication in connection with play with the puppet (further disclosed in description of site under construction, pg. 4); *and informational sections disclose the scientific reasoning behind the puppetry play (newly referenced section of www.puppetools.com).*

5. As per the remaining dependent claims 5-6, 8-13, 17-18, and 20-22, Puppetools discloses all the claimed elements, to include printing puppets and offering detailed play instruction (www.puppetools.com).

#### ***Response to Arguments***

6. Applicant's arguments filed 11/10/2005, with respect to Claims 1, 5-13, 16-18, and 20-23, have been fully considered but they are not persuasive.
7. The applicant makes the argument that the amended subject matter (scientific reasoning/concept) was not in public use or for sale more than one year prior to the filing date of the subject application.
8. However, as can be seen by the additional pages cited from the www.puppetools.com website, the science behind the use of puppets for facilitating learning and

communication was well disclosed and taught by the inventor more than a year prior to the priority date of 3/11/2001 (*newly referenced section of [www.puppetools.com](http://www.puppetools.com)*).

9. Furthermore, although the programming behind the website and the format in which the information was shared with the online community may have changed over years, the business concept/method was well disclosed and defined a year prior to filing the application for a patent.

### *Conclusion*

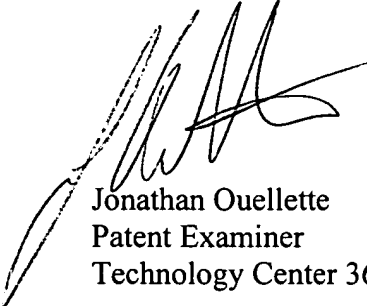
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Ouellette whose telephone number is (571) 272-6807. The examiner can normally be reached on Monday through Thursday, 8am - 5:00pm.
11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone numbers for the organization where this application or proceeding is assigned (571) 273-8300 for all official communications.
12. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Office of Initial Patent Examination whose telephone number is (703) 308-1202.

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January 11, 2006

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Jonathan Ouellette  
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